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NOTE

From: Presidency

To: Delegations

No. Cion doc.: 15899/22 and 15902/22

Subject: Proposal for a COUNCIL DIRECTIVE on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in the field of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, equal treatment between women and men in matters of social security and in the access to and supply of goods and services, and deleting Article 13 of Directive 2000/43/EC and Article 12 of Directive 2004/113/EC; and

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation, and deleting Article 20 of Directive 2006/54/EC and Article 11 of Directive 2010/41/EU

Delegations will find attached a set of drafting suggestions prepared by the Presidency concerning the above proposals in the light of the discussions that have taken place in the Working Party and written comments received from delegations. To facilitate the further discussion, and in order to continue the work on both proposals as a package at this stage, the Presidency has decided to present these suggestions in a single document.

Changes in relation to the previous versions (docs. 15899/22 and 15902/22) are indicated as follows: new text is in **bold** or **bold underlined** type and deletions are marked "[...]". Changes have been made to Articles 2-12, Articles 14-16, and Articles 18-22.

*Article 1***Purpose, subject matter and scope**

1. This Directive lays down minimum requirements for the functioning of equality bodies to improve their effectiveness and guarantee their independence in order to strengthen the application of the principle of equal treatment as derived from Directives [*relevant equality directives*].¹
2. The obligations placed on Member States and the tasks of equality bodies under this Directive shall cover the rights and obligations derived from Directives [*relevant equality directives*].

*Article 2***Designation of equality bodies**

Member States shall designate one or more bodies (hereinafter referred to as ‘equality bodies’) to exercise the competences laid down in this Directive.

[...]²

*Article 3***Independence**

1. Member States shall take measures to ensure that equality bodies are independent and free from external influence **while** performing their tasks and exercising their competences, in particular as regards their legal structure, accountability, budget, staffing, and organisational matters.
2. Member States shall provide for transparent rules and safeguards concerning the selection, appointment, revocation and potential conflict of interest of the staff of equality bodies, in particular persons holding a managerial position, in order to guarantee their competence and independence.

¹ Note: Cross-references to be added later.

² Note: Deleted element to be reflected in a recital.

3. Member States shall ensure that appropriate safeguards are in place, in particular in the internal structure of equality bodies, to guarantee the independent, **and where appropriate impartial**, exercise of their competences. [...]
4. Member States shall ensure that appropriate safeguards are in place in the internal structure of multi-mandate bodies to guarantee the **effective** exercise of the equality mandate.

Article 4

Resources

1. Member States shall ensure that each equality body is provided with the human, technical and financial resources necessary to perform [...] its tasks and to exercise [...] its competences effectively, on [...] the grounds and in all fields covered by Directives [*relevant equality directives*]. [...]
2. Where equality bodies are part of a body in charge of several mandates, paragraph 1 shall apply specifically to the equality mandate and its support staff and systems.

Article 5

Prevention, promotion and awareness raising

1. Member States shall **adopt appropriate measures, such as strategies**, to raise awareness of the general population, throughout their territory, with particular attention to individuals and groups at risk of discrimination, on the rights under Directives [*relevant equality directives*] and on the existence of equality bodies and their services;
2. **Member States shall** ensure that equality bodies engage in the prevention of discrimination and in the promotion of equal treatment. [...] ³

³ Note: Deleted element to be reflected in a recital.

3. [...] Member States and equality bodies shall take into consideration the most appropriate communication tools and formats for each target group. They shall focus in particular on groups **at risk of discrimination** whose access to information can be hindered, for example by their economic status, age, disability, literacy, nationality, **or** residence status or **by** their lack of access to online tools.

Article 6

Assistance to victims

1. Member States shall ensure that equality bodies are able to provide assistance to victims as set out in paragraphs 2 to 4.
2. Equality bodies shall be able to receive complaints of discrimination. [...]
3. Equality bodies shall provide assistance to victims, initially by informing them on the legal framework, including advice targeted to their specific situation, on the services offered by the equality body and related procedural aspects, as well as on available remedies, including the possibility to pursue a case in court.

Equality bodies shall also inform victims about the confidentiality rules applicable, on the protection of personal data and on the possibilities to obtain psychological or other types of relevant support from other bodies or organisations.

4. [...]

Equality bodies shall inform the complainants [...] whether [...] **the complaint will be closed or if** there are grounds to pursue it further. [...]

Article 7

[...] Alternative dispute resolution

Equality bodies shall be able to offer the parties the possibility to seek an **alternative resolution** to their dispute. That process [...] may be led by the equality body itself or by another existing dedicated entity, in which case the equality body may formulate observations to that entity. [...]

Article 8

[...] Investigation

1. Member States shall ensure that [...] **equality bodies are empowered to effectively investigate**, following a complaint or on their own initiative, [...] **whether a breach of the principle of equal treatment laid down in Directives [*relevant equality directives*] has occurred.** [...]
2. Member States shall provide for a framework which enables equality bodies to carry out fact-finding.

In particular, that framework shall provide equality bodies with effective rights to access information which is necessary to establish whether discrimination has occurred. It shall also provide for appropriate mechanisms for equality bodies to cooperate with relevant public bodies for that purpose.

3. [...] ⁴
4. [...] ⁵

Article 8a

Opinions and decisions

1. Member States shall ensure that equality bodies **are empowered to record** [...] their assessment of the case, including establishing the facts and a reasoned conclusion on the existence of discrimination. Member States shall determine whether this is to be done by means of non-binding opinions or by [...] binding enforceable decisions.
2. Where appropriate, **both non-binding** opinions and **binding** decisions shall include specific measures to remedy any breach found and to prevent further occurrences. Member States shall establish appropriate mechanisms for follow-up to **non-binding** opinions, such as feedback obligations, and for enforcement of **binding** decisions.
3. Equality bodies shall publish summaries of their opinions and decisions, without disclosing personal data.

⁴ Note: Deleted element to be reflected in a recital.

⁵ Note: Former Article 8(4) has been moved to a separate Article 8a.

Article 9

Litigation

1. Member States shall ensure that equality bodies have the right to act in court proceedings in administrative and civil law matters relating to the implementation of the principle of equal treatment laid down in Directives [*relevant equality directives*] in accordance with paragraphs 2 to 5, without prejudice to national rules on the admissibility of actions.
2. The right to act in court proceedings shall include:
 - (a) the right of the equality body to act as a party in proceedings on the enforcement or judicial review of a decision taken pursuant to Article **8a**;
 - (b) the right of the equality body to submit observations to the court [...] **in accordance with national law**;
 - (c) the right of the equality body to initiate [...] proceedings on behalf of, or **participate in proceedings** in support of, one or several victims. [...]
3. Member States shall ensure that the equality body can initiate court proceedings in its own name, in particular in order to address structural and systematic discrimination in cases selected by the equality body because of their abundance, their seriousness or their need for legal clarification.
4. [...]
5. Member States shall ensure that no investigations pursuant to Article 8(2) to **(3) and Article 8a** are initiated or continued while court proceedings on the same case are pending.

Article 10

Procedural safeguards

Member States shall ensure that, in the procedures referred to in Articles 6, 7, 8, **8a** and 9, the rights of defence of natural and legal persons involved are duly protected. [...]⁶

Decisions referred to in Article **8a** [...] shall be subject to judicial review, in accordance with national law.

⁶ Note: Deleted element to be reflected in a recital.

Article 11

Equal access [...]

1. Member States shall guarantee access to equality bodies' services and publications on an equal basis for all and ensure that there are no barriers to submission of complaints.
2. Member States shall ensure that equality bodies provide all their services at no cost to complainants, throughout their territory, including in rural and remote areas.
- 3.⁷

Article 11a

Accessibility and reasonable accommodation

Member States shall ensure accessibility and provide reasonable accommodation for persons with disabilities to guarantee their equal access to all services and activities of equality bodies, including assistance to victims, complaint handling, **alternative dispute resolutions**, information and publications, [...] **as well as** prevention, promotion and awareness-raising activities.

Article 12

Cooperation

Member States shall ensure that equality bodies have appropriate mechanisms in place to cooperate, within their respective fields of competence, with other equality bodies within the same Member State, and with relevant public and private entities, including civil society organisations at national, regional **and** local level as well as in other Member States and at Union and international level.

⁷ Note: The disability provisions formerly set out in Article 11(3) have been moved to a separate Article 11a.

Article 13

Consultation

Member States shall put in place transparent procedures to ensure that the government and other public institutions consult equality bodies on legislation, policy, procedure, programmes, and practices related to the rights and obligations derived from Directives [*relevant equality directives*] in a timely manner.

They shall ensure that equality bodies have the right to make recommendations on those matters, to publish them and to require feedback from the authorities concerned.

Article 14

Data collection and access to equality data

1. Member States shall ensure that equality bodies collect data on their activities, with a view to producing the reports referred to in Article 15, points (b) and (c).
2. The data collected shall be disaggregated by grounds and fields covered by Directives [*relevant equality directives*], and in accordance with the indicators referred to in Article 16. The personal data collected shall be anonymised and, where not possible, pseudonymised.
3. Member States shall ensure that equality bodies can access statistics related to the rights and obligations derived from Directives [*relevant equality directives*] collected by public and private entities including public authorities, trade unions, companies, and civil society organisations where they deem such statistics necessary to make an overall assessment of the situation regarding discrimination in the Member State, and for drawing up the report referred to in Article 15, point (c).
4. Member States shall allow equality bodies to make recommendations on which data is to be collected in relation to the rights and obligations derived from Directives [*relevant equality directives*], to public and private entities including public authorities, trade unions, companies and civil society organisations. Member States **may** also allow equality bodies to play a coordination role in the collection of equality data.
5. Member States shall ensure that equality bodies may conduct independent surveys concerning discrimination.

Article 15

Reports and strategic planning

Member States shall ensure that equality bodies:

- (a) adopt a multi-annual programme setting out their priorities and prospective activities. [...]
- (b) produce and make available to the public an annual activity report, including their annual budget, staff and financial reporting;
- (c) publish a report, with recommendations, at least every four years, on the state of equal treatment and discrimination, including potential structural issues, in their Member State.

Article 16

Monitoring and reporting

1. The Commission shall, by means of an implementing act, establish a list of common indicators to measure the practical effects of this Directive. When preparing the indicators, the Commission may seek advice from the European Union Agency for Fundamental Rights and the European Institute for Gender Equality. **The Commission shall consult Member States and relevant stakeholders when preparing the indicators.** The indicators shall cover the resources, independent functioning, activities, and effectiveness of equality bodies, as well as **developments** in their mandate, powers or structure, ensuring the comparability, objectivity and reliability of the data collected at national level.
2. By [*5 years after the date of transposition*], and every 5 years thereafter, Member States shall provide the Commission with all relevant information regarding the application of this Directive, including data on its practical effects collected on the basis of the indicators referred to in paragraph 1 of this Article, and in particular taking into account the reports drawn up by the equality bodies under Article 15, points (b) and (c).
3. The Commission shall draw up a report on the application and practical effects of this Directive, based on the information referred to in paragraph 2 and additional relevant data collected at national and Union level, in particular from stakeholders, by the European Union Agency for Fundamental Rights and the European Institute for Gender Equality.

Article 17

Minimum requirements

1. Member States may introduce or maintain provisions which are more favourable than the minimum requirements laid down in this Directive.
2. The implementation of this Directive shall under no circumstances constitute grounds for a reduction in the level of protection against discrimination already afforded by Member States in the matters covered by this Directive.

Article 18

Processing of personal data

1. Member States shall ensure that equality bodies may collect personal data only where necessary for the fulfilment of a task under this Directive.
2. Member States shall ensure that when equality bodies process **the** special categories of personal data **referred to in Article 9 of Regulation (EU) 2016/679**, [...] suitable and specific measures are provided to safeguard the fundamental rights and the interests of the data subject.

Article 19

Amended articles in Directives XX and XX

Article [xx] of Directive [xx] and Article [xx] of Directive [xx] are deleted. References to the bodies for the promotion of equal treatment referred to in those Articles shall be construed as references to the equality bodies referred to in Article 2 of this Directive.

Article 20

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [18 months **after its entry into force**]. They shall immediately inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 21

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

Article 19 shall apply from [date referred to in Article 20(1)].

Article 22

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

[...]⁸

⁸ Note: Signatures to be added later.